

BEFORE THE PUBLIC DISCLOSURE COMMISSION
OF THE STATE OF WASHINGTON

IN RE COMPLIANCE)	PDC CASE NO: 02-272
WITH RCW 42.17)	
)	Report of Investigation
Rick Luther, Christopher Hurst &)	
Kevin Esping)	
)	
Respondents)	
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I.

BACKGROUND

- 1.1 On November 28, 2001, Robert Edelman filed a citizen's action in accordance with RCW 42.17.400 with the Office of the Attorney General and the King County Prosecutor's Office. Mr. Edelman's complaint alleged violations of RCW 42.17.530 by the Black Diamond Citizens for Political Responsibility and Rick Luther, Christopher Hurst and Kevin Esping for sponsoring political advertising that contained false statements against Barry Kombol, a candidate for the mayor of Black Diamond. Mr. Edelman provided the PDC with a courtesy copy of the complaint.
- 1.2 On December 6, 2001, the Black Diamond Citizens for Political Responsibility and Rick Luther, Christopher Hurst and Kevin Esping were sent letters notifying them about the complaint.
- 1.3 On December 12, 2001, the PDC was officially notified by the Office of the Attorney General that they were referring the matter to the PDC for investigation.

II.

SCOPE

- 2.1 Reviewed complaint letter and other information filed by Mr. Edelman and received by the Attorney General's Office on November 28, 2001.
- 2.2 Reviewed response received on December 14, 2001 by the Black Diamond Citizens for Political Responsibility.
- 2.3 Reviewed response received on December 14, 2001, by Rick Luther, Christopher Hurst and Kevin Esping. The information provided by the respondents included the following documents:

- February 12, 1994, copy of King County citation # NO15122, incident number 94-053922 against Barry Kombol;
- December 9, 1996, copy of King County citation # CQ08592, incident number 96-377551 against Barry Kombol;
- A domestic violence complaint from the King County Prosecuting Attorney's Office against Barry C. Kombol, alleging one count of Assault, and one count of Assault in the Fourth Degree;
- January 12, 1998, Declaration of Dr. Andrew Willner, a Board Certified Family Practitioner from Enumclaw, Washington;
- February 10, 1998, Declaration of Dr. Owen E. Clark, a Board Certified Psychiatrist;
- February 11, 1998, Declaration of Father Gary Zender, Pastor of the Sacred Heart Parish in Enumclaw, Washington;
- February 9, 1998, Declaration of Edward M. Nearing, a neighbor of Barry and Cathleen Kombol;
- Selected pages of the Petitioner Wife's Trial Brief that included under the Expert Witnesses Appointed by the Court, the recommendation of Doug Bartholomew, M.S. based on his domestic violence evaluation of Barry Kombol. In addition, a September 15, 1998, cover letter from Doug Bartholomew and Associates, State Certified Domestic Violence Program and their final report on the Barry Kombol case;

- January 16, 1998, Declaration of Petitioner in Support of Motion for Ex Parte Restraining Order and Order to Show Cause signed by Cathleen Kombol.
- 2.4 On January 10, 2002, PDC staff conducted a telephone interview with Barry Kombol regarding PDC Case No. 02-272 and 02-273.
- 2.5 On January 10, 2002, PDC staff sent Barry Kombol a letter confirming the information discussed during the telephone interview, and requesting a response certifying what was discussed.
- 2.6 On January 11, 2002, PDC staff reviewed three volumes of files at the Kent Regional Justice Center, for Case No. 98-3-00480-4 KNT regarding the marriage of Cathleen Teresa Kombol and Barry Christopher Kombol.

III.

RELEVANT AREAS OF LAW

- 3.1 **RCW 42.17.020** states in part the following:

“(32) "Political advertising" includes any advertising displays, newspaper ads, billboards, signs, brochures, articles, tabloids, flyers, letters, radio or television presentations, or other means of mass communication, used for the purpose of appealing, directly or indirectly, for votes or for financial or other support in any election campaign.”

- 3.2 **RCW 42.17.530** states in part the following:

“(1) It is a violation of this chapter for a person to sponsor with actual malice:

(a) Political advertising that contains a false statement of material fact about a candidate for public office. However, this subsection (1) (a) does not apply to statements made by a candidate or the candidate’s agent about the candidate or himself or herself;

(2) Any violation of this section shall be proven by clear and convincing evidence.”

3.3 **RCW 42.17.505** states the following:

“The definitions set forth in this section apply throughout RCW 42.17.510 through 42.17.540.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.”

IV.

FINDINGS

4.1 On November 1, 2001, Rick Luther, Christopher Hurst and Kevin Esping paid for and distributed a political advertisement in opposition to Barry Kombol, a candidate for Mayor of Black Diamond. In addition, the political advertisement was reported as an Independent Expenditure on PDC Form C-6, an Independent Expenditure report filed on October 30, 2001. **See Exhibit #1.** The advertisement stated in part:

“...You will be voting soon for your next mayor. One of the candidates, Howard Botts is an honorable man of unquestioned integrity and demonstrated leadership. We support him.”

“It brings us no pleasure to tell you that his opponent, Barry Kombol, is in our opinion, not qualified to be mayor. Last week we were given copies of records, which are available to anyone in the public. We found these records deeply disturbing. To verify their authenticity, we viewed these public documents at their source last Tuesday. They detail a long history of contacts with police, criminal justice authorities and courts for assaults by Mr. Kombol on his own family members.”

“These records also document Mr. Kombol being charged with Domestic Violence Assault against his wife on at least three occasions. Other prominent members of the community, including physicians, documented these assaults as well. As mayor, Mr. Kombol would oversee the operations of the Black Diamond Police Department. His conduct demonstrates that he should not hold this position.”

“We oppose Barry Kombol for mayor.”

4.2 The advertisement contained the following sponsor identification:

**“paid for by Rick Luther, Kevin Esping & Christopher Hurst
22018 SE 295th PL, Black Diamond, WA 98010
Notice to voters: This political letter is not authorized or
approved by any candidate.”**

4.3 On November 28, 2001, Robert Edelman filed a citizen’s action in accordance with RCW 42.17.400 with the Office of the Attorney General and the King County Prosecutor’s Office. Mr. Edelman’s complaint alleged violations of RCW 42.17.530 by Rick Luther, Christopher Hurst and Kevin Esping for sponsoring political advertising that contained false statements against Barry Kombol, a candidate for the mayor of Black Diamond. On November 28, 2001, Mr. Edelman provided the PDC with a courtesy copy of the complaint. **See Exhibit #2.**

4.4 On December 6, 2001, PDC staff sent a letter to Rick Luther, Kevin Esping & Christopher Hurst requesting a response to two specific statements made in the political advertisement. Those statements were as follows:

- **“These records also document Mr. Kombol being charged with Domestic Violence Assault against his wife on at least three occasions.”**
- **“Other prominent members of the community, including physicians, documented these assaults as well.”**

4.5 On December 14, 2001, Rick Luther, Kevin Esping & Christopher Hurst responded to the two questions in the December 6, 2001 letter. **See Exhibit #3.** With regard to the statement **“These records also document Mr. Kombol being charged with Domestic Violence Assault against his wife on at least three occasions.”** the respondents stated the following:

“Barry Kombol was charged for the crime of Domestic Violence Assault in the Fourth Degree on February 16, 1994 under King County criminal complaint #N015122, pursuant to King County Police investigation and case number 94-053922.”

“Barry Kombol was charged again on December 8, 1996, and December 9, 1996 under King County criminal complaint CQ0859KC, pursuant to King County Police investigation under case number 96-377551.”

- 4.6 The respondents provided documentation to support their statements in the political advertisement that included: 1) a February 12, 1994, copy of King County citation # NO15122, incident number 94-053922 against Barry Kombol; 2) a December 9, 1996, copy of King County citation # CQ08592, incident number 96-377551 against Barry Kombol; and 3) a domestic violence complaint from the King County Prosecuting Attorney’s Office against Barry C. Kombol, alleging one count of Assault, and one count of Assault in the Fourth Degree. **See Exhibit #4.**
- 4.7 With regard to the other statement, **“Other prominent members of the community, including physicians, documented these assaults as well.”** the respondents provided information that included the following:
- A declaration of Dr. Andrew Willner, a Board Certified Family Practitioner from Enumclaw, Washington;
 - A declaration of Dr. Owen E. Clark, a Board Certified Psychiatrist;
 - A declaration from Father Gary Zender, Pastor of the Sacred Heart Parish in Enumclaw, Washington;
 - A declaration of Edward M. Nearing, a neighbor of Barry and Cathleen Kombol; and
 - A section of the Petitioner Wife’s Trial Brief entitled *Expert Witnesses Appointed by the Court* section, included the recommendation of Doug Bartholomew, M.S. based on a domestic violence evaluation of Barry Kombol. In addition, also included was the final report on the Kombol case from Doug Bartholomew and Associates, as part of the State Certified Domestic Violence Program.
- 4.8 The declaration of Dr. Andrew Willner, a Board Certified Family Practitioner from Enumclaw, Washington. **See Exhibit #5.** Dr. Willner’s declaration included the following:
- “I have been the Kombols family physician since approximately 1981, seeing both Mrs. Kombol and the children on numerous occasions throughout the year. I have personally observed a number of injuries on Mrs. Kombol which are consistent with**

spousal abuse such as swelling on her face, a grinding sensation of the jaw, swelling in the jaw area, and tenderness of the muscles surrounding the spine. I became suspicious about the cause of Mrs. Kombol's injuries and confronted her with my concerns in December of 1996."

"Mrs. Kombol admitted that the previously reported "accidents" were in fact physical abuse at the hands of her husband. Mrs. Kombol admitted to me that while there was a single incident involving her knee which really was an "accident", the others had in fact been the result of physical violence."

- 4.9 The declaration of Dr. Owen E. Clark, a Board Certified Psychiatrist who had seen Mrs. Kombol on a regular basis since 1989, and had seen Mr. and Mrs. Kombol in marital counseling for two years, stated the following:

"I do not live in Enumclaw, so I have no first-hand experience to comment on reports of Mrs. Kombol's behavior there. I have, however, been a personal witness to Mr. Kombol's sudden explosive violent behavior in my office, so I know something of the behavior he is capable of." See Exhibit #6.

- 4.10 The declaration from Father Gary Zender, Pastor of the Sacred Heart Parish in Enumclaw, Washington included information in which he stated he first suspected abuse three or four years ago in the Kombol household. **See Exhibit #7.**
- 4.11 The declaration of Edward M. Nearing, a neighbor of Barry and Cathleen Kombol provided information that he had twice seen Mrs. Kombol with a black eye. **See Exhibit #8.**
- 4.12 The recommendation of Doug Bartholomew, M.S. was included in the Petitioner Wife's Trial Brief entitled *Expert Witnesses Appointed by the Court* section based on his domestic violence evaluation of Barry Kombol. **See Exhibit #9.**
- 4.13 The respondents provided a September 15, 1998, cover letter from Doug Bartholomew and Associates, a State Certified Domestic Violence Program, and an accompanying final report produced by Mr. Bartholomew regarding the Kombol case. **See Exhibit #10.** The following information was provided in the report by Mr. Bartholomew:

Allegations and related material

“There is a criminal charge pending in the form of a Stipulated Order of Continuance in which he has stipulated on a domestic violence charge with his estranged wife as the victim of record. The situation is complicated by the fact that Mr. Kombol stipulated to the record but denied in an attached document that he had done the acts in question, in other words, not stipulating to the record. For reasons which are not immediately apparent this contradiction was not resolved in court...”

Recommendations

“Mr. Kombol should be in extensive therapeutic intervention specific not only to the overt physical aspects of domestic violence but to the whole range of abusive, controlling behaviors especially those he has utilized in the relationship with Mrs. Kombol...”

- 4.14 Staff reviewed three volumes of files at the Kent Regional Justice Center regarding King County Case No. 98-3-00480-4 KNT. That review verified the authenticity of the documents submitted by the respondents in response to the allegations in the complaint filed by Bob Edelman.
- 4.15 We reviewed the complaint filed by Mr. Edelman and concluded the following with regard to each of the allegations against Rick Luther, Kevin Esping and Christopher Hurst:
1. It was alleged the respondents sent out a deceptive political advertisement and acted with a “reckless disregard of the truth” regarding the statements made in the advertisement about Barry Kombol being involved with assault and domestic violence. See Report of Investigation sections 4.4 through 4.13.
 2. It was alleged the respondents did not support the accusations made in the political advertisement, and that instead of reviewing and providing the information contained in the entire case file (about 1,200 pages) they only included certain information and excluded other information. Staff reviewed the entire case file independently and found that it contained conflicting evidence regarding the abuse issues.

3. It was alleged that the three individuals listed in the letter stated, “Our sense of duty and honor requires that we speak out on this matter now.” but that their motivation was political. Regardless of their motivation, that statement is a matter of opinion and not a false statement. In addition, the information in the complaint about polling that was contained in a personal letter to Mr. Edelman from Mr. Hurst was not relevant to this matter.
4. It was alleged that Kevin Esping admitted to Bob Edelman that he did not review the documents at the source, so the statement “...**To verify their authenticity, we viewed these public documents at their source last Tuesday...**” is a false statement of fact. The advertisement did not state that each person listed in the letter reviewed the “public documents”, and this information is not a material fact.
5. It was alleged “the file contained convincing evidence that the charge made by Mrs. Kombol of domestic violence were false”. The investigation found that the evidence relied upon by the respondents was found to be credible. In addition, the documents submitted by Rick Luther, Christopher Hurst and Kevin Esping as part of their response to corroborate the statements made in the political advertisement were part of the Kombol case file. Staff reviewed the entire Kombol case file independently and found that it contained conflicting evidence regarding the abuse issues and the evidence appeared credible.
6. Mr. Edelman included information about a polygraph examination of Barry Kombol taken during the divorce proceeding and the fact that the officers did not consider this evidence. This statement was not an allegation, and was not an issue that was investigated. Staff reviewed the polygraph examination as part of our review of the Kombol case file and a copy is included in this case file.
7. It was alleged “the police officers refer to Mr. Kombol being charged with Domestic Violence Assault on several occasions. They fail to note the charges were dismissed.” The allegations of false statements only apply to information that was included in the political advertisement.
8. It was alleged that since Mr. Kombol served as a Guardian Ad Litem for King and Pierce County, that information about his character and conduct should be noted. That information was not included in the political advertisement and therefore not investigated.

9. It was alleged that the respondents “recklessly ignored all information to the contrary” when they stated in the flyer “As mayor, Mr. Kombol would oversee the operations of the Black Diamond Police Department. His conduct demonstrates that he should not hold this position.” The portion of that statement about the mayor of Black Diamond overseeing the police department is a true statement. However, the statement about Mr. Kombol’s conduct is an expression of opinion and not a statement of fact
10. Mr. Edelman included information about a letter from Christopher Hurst to him regarding this matter. The letter from Mr. Hurst to Mr. Edelman was not political advertising, and thus not investigated.

4.16 In all matters relating to this investigation, Rick Luther, Christopher Hurst and Kevin Esping have fully cooperated.

Respectfully Submitted this ____ day of January, 2001.

Kurt Young
Chief Political Finance Specialist

List of Exhibits

- Exhibit #1** November 1, 2001, political advertising letter sponsored by Rick Luther, Christopher Hurst and Kevin Esping, and an Independent Expenditure Report (PDC Form C-6) filed by the three individuals listed above on October 30, 2001.
- Exhibit #2** November 28, 2001, a courtesy copy of the complaint filed Mr. Edelman was provided to the PDC.
- Exhibit #3** December 14, 2001, response received from Rick Luther, Kevin Esping & Christopher Hurst regarding Bob Edelman complaint.
- Exhibit #4** A February 12, 1994, copy of King County citation # NO15122, incident number 94-053922 against Barry Kombol; a December 9, 1996, copy of King County citation # CQ08592, incident number 96-377551 against Barry Kombol; and a domestic violence complaint from the King County Prosecuting Attorney's Office.
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